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24 Hour Fitness USA, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT  
OAKLAND DIVISION

24 Hour Fitness USA, Inc.,

Plaintiff,

vs.

Apex Stores, LLC; Apex, LLC; Apex at  
Home, LLC,

Defendants.

No. CV 08 1681 SBA

**STIPULATION AND [PROPOSED]  
ORDER TO EXTEND TIME TO FILE A  
RESPONSIVE PLEADING AND FOR  
OPPOSITION, REPLY BRIEFING  
DEADLINES**

**[N.D. Local Rule 6-1(b)]**

Plaintiff 24 Hour Fitness USA, Inc. ("24 Hour Fitness" or "Plaintiff") and Defendants Apex Stores, LLC, Apex, LLC and Apex at Home, LLC ("Defendants") hereby file this Stipulation to extend the time for Defendants to answer or otherwise file a responsive pleading and to set a briefing schedule for any Rule 12 Motion that Defendants may file.

WHEREAS, 24 Hour Fitness commenced this action on March 27, 2008 in the U.S. District Court for the Northern District of California, San Jose division, and caused service of its

1 Original Complaint (“Original Complaint”) to be made on Apex Stores’ registered agent for  
 2 service of process on May 12, 2008.

3 WHEREAS, on May 30, 2008, 24 Hour Fitness and Apex Stores, LLC filed a Stipulation  
 4 to Extend Time to File a Responsive Pleading permitting Apex Stores, LLC until June 9, 2008 to  
 5 answer or otherwise respond to 24 Hour Fitness’ Original Complaint.

6 WHEREAS, 24 Hour Fitness filed its First Amended Complaint in the action on June 3,  
 7 2008 (“First Amended Complaint”), adding defendants Apex, LLC and Apex at Home, LLC.

8 WHEREAS, in light of the above, Defendants’ responsive pleading is due on or before  
 9 June 16, 2008.

10 WHEREAS, on June 12, 2008, Plaintiff’s counsel proposed to give Defendants until June  
 11 30, 2008 to answer or otherwise respond to the First Amended Complaint, as Plaintiff’s counsel  
 12 would be on vacation and unable to respond to a motion filed during that time. The parties  
 13 further discussed a briefing schedule, as counsel for Defendants confirmed that they intend to file  
 14 a Rule 12 Motion.

15 NOW, THEREFORE, it is hereby stipulated and agreed to by the Parties, through their  
 16 respective attorneys of record, that:

17 1. Defendants shall have until June 30, 2008 to respond to 24 Hour Fitness’ First  
 18 Amended Complaint;

19 2. When Defendants file their intended motion on June 30th, Defendants will seek to  
 20 schedule the hearing on the motion for July 29, 2008; if that date is available, Defendants shall  
 21 file a joint stipulation to revise the briefing schedule so that Plaintiff’s opposition brief will be due  
 22 on or before July 15, 2008 and Defendants’ reply brief will be due on or before July 22, 2008; and

23 3. In the event that the July 29th hearing date is unavailable, Defendants shall select  
 24 the next available hearing date, and no further changes to the briefing schedule shall be necessary.

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1 Dated: June 17, 2008

MANATT, PHELPS & PHILLIPS, LLP

2  
3 By: /s/ Susan E. Hollander

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18 Dated: June 17, 2008

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28 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, Britt L. Anderson hereby attests that concurrence in the filing of this document has been obtained.*

***PURSUANT TO STIPULATION, IT IS SO ORDERED:***

\_\_\_\_\_  
HONORABLE SAUNDRA BROWN ARMSTRONG

DATED: \_\_\_\_\_